IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Govind Singh & Ors. Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1424/2006

DATE OF ORDER :: November 09, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

None present for the petitioners.
Mr.Ashok Upadhyaya, P.P.

BY THE COURT:

Despite repeated calls, no one appears for the petitioners.

Heard learned Public Prosecutor. Perused the memo of petition as also the orders impugned passed by both the courts below.

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners have challenged the order dt. 5.9.2006 passed by the Additional Sessions Judge, Bhadra Distt. Hanumangarh (for short 'the revisional court' hereinafter),

whereby the revision petition filed by the petitioners against the order dt. 17.5.2005 passed by the Additional Chief Judicial Magistrate, Bhadra (for short 'the trial court' hereinafter), was dismissed.

Facts giving rise to the instant criminal misc. petition are that on a “Parcha Bayan” of injured non-petitioner No.2 Suraj Mal, police registered a crime report being FIR No.124/2004 against the present petitioners and other co-accused, however, after investigation, the police filed the challan against the other co-accused under sections 147, 148, 342,323/149, 325/149 and 367 I.P.C. and left the present petitioners, no challan was filed against them. During the pendency of the trial of the case, after recording the statements of some of the witnesses, the complainant-non-petitioner No.2 filed an application under section 319 Cr.P.C. before the trial court seeking to arraign the present petitioners as accused. On the basis of evidence recorded by the trial court, the trial court by order dt. 17.5.2005 allowed the application filed by the non-petitioner No.2 and arraigned the present petitioners as accused along with the co-accused facing trial and took the cognizance of offences and issued the process by summoning the petitioners by a bailable warrant. That order came to be challenged before the revisional court. The revisional court on appreciation of material available

on record of the trial court, came to the conclusion that the trial court was justified in arraigning the present petitioners by exercising the powers under section 319 Cr.P.C. and dismissing the revision petition. Hence, this criminal miscellaneous petition.

The main ground raised in the memo of petition is that petitioners No.1 to 3 have not been specifically named in the FIR though certain persons have been named and in addition to persons named, it was stated that there are certain other persons amongst the assailants, who caused the injuries. It has been contended in the petition that no offence under section 367 I.P.C. is made out and lastly it has been contended in the petition that without affording an opportunity of hearing to the petitioners, the order impugned has been passed.

I have carefully gone through the orders passed by both the courts below.

Section 319 Cr.P.C. provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

So far as section 367 Cr.P.C. is concerned, the very essential ingredients for the offence under section 367 I.P.C. are that whoever kidnaps or abducts any person in order that such person may be subject, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of.

In the instant case, from the statements of the witnesses, prima facie, there is an evidence that the non-petitioner No.2 injured was kidnapped and subjected to assault and suffered as many as 12 injuries, out of which, two were grievous in nature. In the first information report, which was recorded on the "Parcha Bayan" of the injured, it was stated that Ram Singh s/o Teja Ram, petitioner No.3, Govind Singh petitioner No.1 and Karan Dev Singh petitioner No.2 have been named in the "Parcha Bayan" amongst the assailants and, therefore, the contention in the memo of petition that they were not named in the FIR cannot be accepted. PW.1 Surajmal is the injured as also the author of the FIR as the FIR on his "Parcha Bayan" vide Ex.P/1 clearly stated that in a jeep bearing No.RJ-31C-1363, which was driven by Jailal and owned by Shiv Prasad, the petitioner No.2 Karan Dev Singh, Ramswaroop, petitioner No.4 Bablu Singh and petitioner No.1 Govind Singh etc. came at 4.00

A.M. on 28.6.2004 and forcibly took away the injured in the jeep and thereafter he was assaulted. The injured himself has stated that the manner in which he was subjected to assault, as many as twelve injuries caused to him, out of which two were grievous in nature resulted in fracture. In his statement, the petitioners have been specifically named and the overt act has been assigned. The statement of PW.1 Surajmal finds fully support from the statement of PW.2 Ramesh Kumar, however, the police after investigation, filed the challan against the other co-accused for the offences under sections noticed above and left the present petitioners, no challan was filed against them for the reasons best known to the police. The trial court noticed that this supports the apprehension of the injured that the police did not fairly investigate the matter. On the basis of the material placed before it, the trial court prima facie found that the petitioners have committed the offences noticed above and, therefore, arraigned them as accused facing trial.

The revisional court on proper appreciation of the evidence, came to the conclusion that there is prima facie strong evidence that the petitioners were amongst the assailants and as such did not find any error in the conclusion arrived at by the trial court and dismissed the revision petition. In my view, both the courts below concurrently found the prima facie case against

the present petitioners. The conclusion arrived at by both the courts below cannot be erroneous in any manner. On the contrary, the conclusion is based on proper and sound appreciation of the evidence and, therefore, both the courts below were justified in arraigning the petitioners for the offences noticed above as accused. It cannot be said that the order impugned would result in serious miscarriage of justice of abuse of process of any court warranting interference in the inherent jurisdiction. It is settled law that the powers under section 482 Cr.P.C. are to be exercised sparingly and cautiously in rarest of rare cases. The case in hand is not of that nature.

In this view of the matter, I do not find any merit in the petition. The same is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-